



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-37/52414

PRELIMINARY RECITALS

Pursuant to a petition filed February 11, 2002, under Wis. Stat. §49.45(5), to review a decision by the Marathon County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on March 26, 2002, at Wausau, Wisconsin.

The issue for determination is whether petitioner's community spouse is entitled to an increase in her income allocation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Sherri Seubert, ESS
Marathon County Dept. Of Human Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a nursing home resident of Marathon County. His wife lives in the community.
2. An application for MA under spousal impoverishment rules was filed on petitioner's behalf on February 8, 2002. MA was granted by a notice dated February 12, 2002. The community spouse income allocation was set at \$2,232, the maximum amount that the county agency could set.
3. Petitioner receives \$1,709.86 monthly from his railroad retirement, and \$435.14 monthly from another pension, for a total of \$2,145. His wife has monthly earned income of \$1,249.15.

4. Petitioner's wife has \$2,700 in necessary monthly expenses. The monthly mortgage payment is \$1,000 and monthly property taxes are \$211.85. Combined monthly homeowners and car insurance is \$260. Monthly utilities are \$175. Petitioner's wife has \$140 in taxes deducted every month from her paychecks. There also is a \$300 per month car payment, and a \$287 per month health insurance premium.

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat. §49.455(1).

The MCAA established a new "minimum monthly needs allowance" for the community spouse at a specified percentage of the federal poverty line. This amount is the income considered necessary to maintain the community spouse in the community. The current maximum level is set at \$2,232 if housing costs exceed \$580.50. MA Handbook, Appendix 23.6.0 (1-1-02).

A fair hearing officer can grant an exception to this limit on community spouse income. The hearing officer may increase the income allowance following a fair hearing. The hearing officer does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

(c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

Wis. Stat., §49.455(8)(c), emphasis added. Thus a hearing officer may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs.

In this case I find that petitioner's wife's necessary expenses amount to \$2,700. This is an unusual case in that the petitioner's wife is young and is employed. Thus she has payroll deductions that an elderly community spouse does not have. She also has relatively large monthly mortgage payments, a car loan, and her own health insurance. Her listed monthly expenses for groceries and utilities are not inflated.

I conclude that petitioner's wife requires \$2,700 monthly to avoid financial duress. The county thus should increase her monthly allowance to that amount, retroactive to the start of eligibility.

CONCLUSIONS OF LAW

Petitioner's wife requires \$2,700 per month income to avoid financial duress.

NOW, THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to recalculate petitioner's cost of care, retroactive to the start of eligibility, taking into account an increased community spouse income allotment of \$2,700 per month.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 2nd day of
April, 2002

/s/Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals
0401/bcs